

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

March 1, 2002

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of the
Telecommunications Act of 1996*

Docket No. 97-00309

**INITIAL ORDER OF HEARING OFFICER
ON BELL SOUTH TELECOMMUNICATIONS, INC.'S JANUARY 28, 2002, PETITION
TO ESTABLISH PROCEDURAL SCHEDULE**

This matter is before the Hearing Officer, Director Melvin Malone, for consideration of *BellSouth Telecommunications, Inc.'s Petition to Establish Procedural Schedule* ("BellSouth's 2002 Petition" or "2002 Petition"), filed on January 28, 2002. The *Response to BellSouth's Petition to Establish Procedural Schedule* was jointly submitted by the Southeastern Competitive Carriers Association ("SECCA"), AT&T of the South Central States ("AT&T") and TCG MidSouth, Inc. ("TCG") on February 4, 2002. For the reasons set forth below, *BellSouth's 2002 Petition* is granted in part and denied in part.

I. Travel of the Case

BellSouth Telecommunications, Inc.'s ("BellSouth") initial Section 271 *Notice of Filing* in this matter, together with supporting documentation and testimony, was filed with the Tennessee Regulatory Authority ("TRA" or "Authority") on December 12, 1997. In conjunction therewith, BellSouth filed its *Statement of Generally Available Terms and Conditions* ("SGAT") on January 16, 1998. Following several technical workshops, a discovery period, and the

submission of pre-filed testimony, a hearing on the merits was held on May 5-7, May 11-15, and May 27-28, 1998.¹ After receiving public notice of the Directors' intent to deliberate this case on the merits during a regularly scheduled March 16, 1999, Authority Conference, BellSouth sought, by motion, to have such deliberations deferred. When its deferral efforts failed, BellSouth sought to withdraw its Tennessee 271 application from the Authority.²

On November 22, 1999, the Authority, pursuant to the request of Bellsouth, issued its *Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing* ("Order Accepting Withdrawal"). The *Order Accepting Withdrawal* provided that "[t]his docket shall remain open for the original purposes set forth in the Authority's [Order Instituting Formal Inquiry and Adopting Procedure, TRA Docket No. 97-00309 (Mar. 21, 1997)]."³

On May 30, 2001, *BellSouth Telecommunications, Inc.'s Preliminary Notice of Filing and Request for Scheduling Conference* ("Preliminary Notice of Filing") was filed with the Authority. BellSouth requested therein that a 271 hearing on the merits be set during the week of November 5, 2001. Pursuant to BellSouth's request, a Status Conference in this matter was held on July 12, 2001. BellSouth submitted its 271 application to the Authority on July 30, 2001.

On August 10, 2001, the Hearing Officer issued the *Initial Order of Hearing Officer on July 12, 2001, Status Conference* ("August 2001 Initial Order"), in which he outlined the procedural framework for this matter, bifurcated the hearing into Phases, and set a Phase I

¹ Approximately twenty-six witnesses submitted testimony at the hearing.

² See *BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*, TRA Docket No. 97-00309 (April 8, 1999).

³ *Order Accepting Withdrawal*, TRA Docket No. 97-00309 p. 5.

hearing date for October 3-5 and October 8-9, 2001.⁴ Also, the Hearing Officer reserved the week of November 12-16, 2001, for further hearings on the merits.⁵ On September 18, 2001, BellSouth filed *BellSouth's Motion to Amend Procedural Order* in which it requested, among other things, the Authority to "cancel the hearings scheduled for October 3 and November 5."⁶

II. BellSouth's Section 271 Filing

a. Advance Notice and Ripeness

When BellSouth withdrew its initial 271 application, it was advised that "when BellSouth chooses to refile its . . . advance notice with the Authority, it should file simultaneously therewith the filing that it will rely on before the [Federal Communications Commission] ("FCC")."⁷ BellSouth was also advised that it "should not refile with the Authority until such time as BellSouth is persuaded that it is in compliance with Section 271 of the Act."⁸

During the July 12, 2001, Status Conference, counsel for BellSouth, reminded of the non-static nature of its previous 271 filing, repeatedly confirmed that the 271 application filed by BellSouth in Tennessee will constitute the 271 application that BellSouth will file before the FCC. Further, counsel for BellSouth affirmed that it is BellSouth's position that its 271 application will be compliant in all respects when filed in Tennessee.⁹

⁴ The purpose of the Phase I hearing was to "receive and evaluate evidence on BellSouth's compliance with Section 271(c)(1)(A), and the inherent issues or sub-issues emanating therefrom, including the resulting opportunity to compete and status of competition in the local telephony market in Tennessee and the public interest, which are, generally, inseverable from a Section 271(c)(1)(A) demonstration." *Initial Order of Hearing Officer on Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration of Initial Order of Hearing Officer on July 12, 2001, Status Conference and Restatement of BellSouth's Position*, TRA Docket No. 97-00309, p. 12 (Sept. 10, 2001) (hereinafter the "September 2001 Initial Order").

⁵ *TRA Notice of Hearing*, TRA Docket No. 97-00309 (Aug. 7, 2001).

⁶ *BellSouth's Motion to Amend Procedural Order*, TRA Docket No. 97-00309, p. 2 (Sept. 18, 2001).

⁷ *Initial Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal and Withdrawal*, TRA Docket 97-00309, p.16 (June 1, 1999) (hereinafter the "Initial Order Accepting Withdrawal").

⁸ *Id.*

⁹ "Our position is we're in compliance with the Act right now." *TRA Transcript of Proceedings*, TRA Docket No. 97-00309, p. 34 (July 12, 2001). Counsel for BellSouth did state, however, that new decisions rendered by the FCC, not existing at the time BellSouth files its 271 application in Tennessee, may dictate the filing of supplemental

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the Bell Operating Companies ("BOCs"). Even still, it is fair to state that it is contemplated that a BOC would only commence the 271 process after a good faith, self-determination that it is compliant.¹⁰ On July 30, 2001, BellSouth voluntarily filed with the Authority what has been represented to be a complete and compliant 271 application that will be filed with the FCC. Due to the unilateral discretion BellSouth enjoys as to when to file its 271 application, BellSouth has been informed by the Authority that BellSouth will be held to its representation that its 271 application is, as filed, fully compliant with the Act.¹¹

b. The Authority's Section 271 Filing Requirements

At the July 12, 2001, Status Conference, the Hearing Officer provided the parties with the FCC's *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice (March 23, 2001) and requested the parties to comment thereon. Comments were filed by XO Tennessee, Inc. ("XO"), BellSouth, and the Joint Commenters.¹² After reviewing the comments of the parties, the Hearing Officer established the Authority's Section 271 filing requirements.¹³

information. *Id.* at 11. See also *BellSouth Telecommunications, Inc.'s Reply to the Comments of AT&T and the Comments of XO Tennessee Regarding the FCC's March 23, 2001 Public Notice*, p. 6. (July 26, 2001) ("Moreover, the FCC may issue orders during the pendency of a state 271 proceeding that will impact the requirements necessary to gain FCC 271 approval and on which the Authority may want to hear evidence of compliance.").

¹⁰ "The [FCC] expects that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the [FCC] rely in making its findings." *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, p. 3 (March 23, 2001).

¹¹ *August 2001 Initial Order*, pp. 5-6. See also *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, p. 4 (March 23, 2001) ("We emphasize that, as a general matter, it is highly disruptive to our processes to have a record that is constantly evolving.").

¹² The Joint Commenters consist of AT&T; TCG; Sprint Communications Company, LP; MCI WorldCom Communications, Inc.; MCI WorldCom Network Service, Inc.; Brooks Fiber Communications of Tennessee, Inc.; and MCIMetro Access Transmissions Services, LLC.

¹³ "Consistent with BellSouth's representation, that its 271 application is complete and compliant as filed, the Act, the FCC's March 23, 2001, Public Notice, and the purpose of an advance notice period, it is the expectation of the

III. BellSouth's 2002 Petition

In its *2002 Petition*, “BellSouth requests that the Authority set a procedural schedule that accomplishes three things: (1) consolidates Phase I and Phase II of this proceeding; (2) permits BellSouth to file certain additional evidence, set forth in detail below, to ensure the record is complete; and (3) sets hearing dates in April 2002.”¹⁴ These requests are addressed below in the order in which they were presented.

a. Request for Consolidation

Arguments of the Parties

BellSouth requests the consolidation of Phases I and II on the grounds that “the two phases are interrelated and considering them together will further both judicial economy and a cohesive presentation of evidence.”¹⁵ “The Intervenor has no preference whether the Authority conducts this docket in one or two phases.”¹⁶

Discussion and Analysis

This case was originally set in two phases, in large part, to accommodate BellSouth's request of an expedited 271 review. Given that the circumstances existing at the time of BellSouth's July 30, 2001, 271 filing in Tennessee have changed, and BellSouth's request for

Authority that any supplemental information or documentation to the 271 application filed with the Authority on July 30, 2001, will arise, if at all, from the following: (1) new evidence solely to rebut arguments made or facts submitted by the Intervenor; (2) public decisions rendered by the FCC; (3) material and relevant public orders rendered from other state proceedings in BellSouth's nine-state territory; (4) public decisions rendered by the TRA; or (5) requests of the TRA. Notwithstanding the above, however, prior to submitting any supplemental information or documentation, including information or documentation that does not fall within the five (5) prescribed categories, BellSouth must obtain permission from the Authority to do so. Assuming, as BellSouth maintains, that its 271 application filed on July 30, 2001, is complete and compliant and is the application that BellSouth intends to rely upon before the FCC, few, if any, circumstances other than those identified here should arise requiring supplemental information.” *August 2001 Initial Order*, pp. 7-8 (footnote omitted).

¹⁴ *BellSouth's 2002 Petition*, p. 1.

¹⁵ *Id.*

¹⁶ *Response to BellSouth's Petition to Establish Procedural Schedule*, TRA Docket No. 97-00309, p. 2 (Feb. 4, 2002) (hereinafter “*Response to BellSouth's 2002 Petition*”).

consolidation, the Hearing Officer hereby grants BellSouth's motion to consolidate the issues presented in this matter into a single hearing.

b. Request to Submit Additional Evidence

Arguments of the Parties

BellSouth requests that it be permitted to supplement the record as follows: (1) testimony of John Ruscilli on BellSouth's compliance with the public interest standard; (2) testimony of John Ruscilli and possible second witness on BellSouth's compliance with Section 272 of the Act; (3) testimony of Alphonso Varner (adopting Dave Coon's previously-filed testimony) and providing Tennessee performance data (in the MSS format) from July 2001 – December 2001;¹⁷ and (4) update its SGAT (incorporating new FCC collocation rules and other more stringent requirements on BellSouth). According to BellSouth, the aforementioned items would not constitute revisions or supplements to existing testimony, but rather is testimony that addresses the *August 2001 Initial Order* and the *September 2001 Initial Order* and "insures that the TRA has BellSouth's most recent performance data."¹⁸

The Intervenors contend that BellSouth should be required to re-file its 271 application with the Authority since its July 30, 2001, filing does not comport with the Authority's Section 271 filing requirements.¹⁹ Specifically, the Intervenors argue as follows:

BellSouth submitted its joint Georgia and Louisiana Section 271 application to the FCC on October 2, 2001 -- approximately two months after BellSouth submitted its advance notice and 271 filing in Tennessee. On December 20, 2001, BellSouth withdrew its joint Section 271 application in lieu of having the FCC reject that application. Given these recent events, BellSouth can no longer represent to the Authority in good faith that its current 271 filing in

¹⁷ With respect to "providing [recent] Tennessee performance data (in the MSS format)[,]" the Hearing Officer understands this request as an attempt to merely update the information requested in the *August 2001 Initial Order*. If the request is, in fact, otherwise, BellSouth should so advise the Hearing Officer immediately.

¹⁸ *BellSouth's 2002 Petition*, p. 2 n.1, p. 3.

¹⁹ *Response to BellSouth's 2002 Petition*, pp. 2-4.

Tennessee is materially the same as any future 271 application it may file before the FCC, or that its current filing is compliant and complete in all respects.²⁰

In sum, the Intervenors maintain that the Authority should “strike” BellSouth’s July 30, 2001, Section 271 filing before the Authority because the filing is not consistent with the Section 271 filing requirements clearly and timely established by the agency.²¹

Discussion and Analysis

As noted above, the decision of when to apply for Section 271 approval is in the sole discretion of the BOCs. Equally noteworthy, however, is the recognition that a BOC would only commence the 271 process after a good faith, self-determination that it is Section 271 compliant. On July 30, 2001, BellSouth voluntarily filed with the Authority what has been represented to be a complete and compliant Section 271 application that will be filed with the FCC. Given the orders that have issued in this docket, it is presumed that BellSouth fully appreciated the implications of its filing.

As required in the Authority’s Section 271 filing requirements, BellSouth has sought the permission of the Authority before filing supplemental information or documentation. The Authority’s Section 271 filing requirements set forth five justifications for supplementing a Section 271 filing.²² To be sure, at a minimum, three of BellSouth’s four requests to file supplemental information may fall within the prescribed justifications.²³ Nevertheless, as evidenced by the record in this matter, the Authority’s Section 271 filing requirements were fashioned upon the following understanding: (1) BellSouth’s 271 application would be, as submitted, compliant with the Act; (2) BellSouth’s 271 application would, as submitted,

²⁰ *Id.* at 2-3 (footnote omitted).

²¹ *Id.* at 3.

²² *August 2001 Initial Order*, pp. 7-8.

²³ *See supra* note 17.

constitute the application to be filed and relied upon before the FCC; and (3) there would be no material passage of time, beyond that necessary to procedurally prepare for hearing, between the filing of such application with the Authority and a hearing on the merits.²⁴ It now appears, as demonstrated below, that BellSouth's July 30, 2001, Section 271 filing does not meet the foregoing criteria.

BellSouth contends that its July 30, 2001, "Section 271 filing with the Authority is complete, and will remain complete in February. The fact that BellSouth will provide the TRA with additional, updated performance data and competitive data in no way impacts the completeness of the current filing."²⁵ Further, BellSouth argues that its Operations Support Systems ("OSS") "provide nondiscriminatory access to CLECs today and are compliant with Section 271 requirements today. Consequently, BellSouth does not believe it will need to amend its case to prove checklist compliance to the Authority."²⁶

Although BellSouth contends steadfastly that its July 30, 2001, Section 271 application was compliant when filed and remains so today, this position is severely weakened, if not obliterated, by BellSouth's withdrawal of its joint Georgia and Louisiana 271 application before the FCC. As cited by the Intervenor, the Chairman of the FCC expressed substantive concerns regarding BellSouth's joint Georgia and Louisiana application.²⁷ Given the "extensive

²⁴ See, cf., *Initial Order Accepting Withdrawal*, pp. 13-14 ("The filing of advance notice with the Authority contemporaneously with preparedness and intent to file a compliant Section 271 application with the FCC, which, of course, was the foundation upon which the procedural framework was erected and agreed to, would fundamentally eliminate the necessity that repeated, substantial supplements would be introduced before any hearing on the merits. . . . Based on representations from BellSouth, the procedural framework was developed with the understanding that BellSouth intended to file its Section 271 application with the FCC relatively soon after the expiration of the advance notice period.").

²⁵ *BellSouth's Reply to Response to Motion to Amend Procedural Schedule*, TRA Docket No. 97-00309, p. 2 (Oct. 2, 2001).

²⁶ *Id.* at 3.

²⁷ *Response to BellSouth's 2002 Petition*, p. 3 n.2.

conversation and collaboration” between BellSouth and the FCC²⁸ and BellSouth’s withdrawal, it is reasonably doubtful that the joint application, as submitted, satisfied the requirements of the Act and FCC precedent.

BellSouth’s Tennessee 271 application was filed with the Authority two months before the joint Georgia and Louisiana application was filed before the FCC. Given the timing of these filings, BellSouth’s reliance on both regionality and Georgia’s SQMs, the withdrawal of BellSouth’s joint Georgia and Louisiana FCC application, and the FCC’s concerns with the joint application, there is reasoned cause for concern regarding the full compliance of the July 30, 2001, Tennessee filing as well. Under the circumstances, it is questionable whether BellSouth can continue to credibly assert that its July 30, 2001, Section 271 application before Tennessee is as represented - “compliant in all respects.”²⁹ For similar reasons, it is likewise questionable whether BellSouth’s July 30, 2001, filing “will constitute the 271 application that BellSouth will file before the FCC.”³⁰

The next issue is whether there would be a material passage of time, beyond that necessary to procedurally prepare for hearing, between the filing of the application and a hearing on the merits that may result in negative consequences. Specifically at issue are the now prolonged elapsed time and the attendant propensity for change from the date on which BellSouth filed its application with the Authority, namely July 30, 2001, and a hearing on the application.

BellSouth supported the withdrawal of its original Tennessee 271 application from the Authority by stating that “BellSouth cannot represent that the filing which is presently before the

²⁸ *Statement of FCC Chairman Michael Powell on Withdrawal of BellSouth 271 Application* (Dec. 20, 2001).

²⁹ *August 2001 Initial Order*, p. 5. See also *supra* note 9.

³⁰ *Id.*

Authority does in fact constitute the complete filing that would be made at the FCC.”³¹ Further, BellSouth could not then represent that yet another supplement would not be required.³² As a factual matter, BellSouth contended strongly, prior to withdrawing its original application, as it does so today, that its Section 271 application was compliant.³³ While BellSouth’s repeated contention of compliance, at that time, may have been both sincere and reasonably based, the passage of time, by BellSouth’s own admissions, proved said contention to be inaccurate.

It is in the public interest, as well as in the interest of all participants in this proceeding, to proceed in this matter consistent with the previously articulated understanding upon which the Section 271 requirements are based. It is likewise in the public interest and arguably the interest of BellSouth to avoid, to the extent practicable, the creation of an atmosphere that could result in a second voluntary withdrawal in Tennessee.

The Hearing Officer, by moving the proceedings to hearing expeditiously, as BellSouth had requested, sought to avoid circumstances that could result in a second Tennessee withdrawal. With the foregoing in mind, the Authority must proceed here with prudence and an aim toward judicial efficiency.

An orderly and timely presentation of the supporting information and documentation will aid in both the efficient administration and the effective adjudication of this case. To aid in ensuring the same, the most proactively cautious approach in addressing the counterproductive “potential for staleness” may be to strike the July 30, 2001, filing in the entirety. Still, it is not the only viable, reasonable approach. As BellSouth is the master of its fate regarding the submission of its Section 271 application, the Hearing Officer has determined that it is

³¹ *Notice of Voluntary Dismissal without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*, TRA Docket No. 97-00309, pp. 1-2 (April 8, 1999).

³² *Id.* at 2.

appropriate, under the circumstances, to order BellSouth to either submit a detailed, substantive affidavit, executed by the President of BellSouth, on or before noon, March 15, 2002, affirmatively asserting, without reservation, that the July 30, 2001, filing is the Section 271 filing that BellSouth would submit to the Authority currently if it were filing a Tennessee Section 271 application, that the July 30, 2001, filing is Section 271 compliant in all respects, that the July 30, 2001, filing is consistent with the Authority's Section 271 requirements, and that the July 30, 2001, filing, as submitted, constitutes the 271 application that BellSouth will submit to the FCC³⁴ or re-file its Tennessee Section 271 application at its discretion.³⁵

c. Request to Set Hearing for April 2002

Arguments of the Parties

In its *2002 Petition*, BellSouth requests the Authority to "complete this proceeding in an expeditious manner."³⁶ Towards that end, BellSouth asks that this matter be set for hearing during the week of April 15, 2002. According to BellSouth, "[t]hese hearing dates will provide

³³ See, e.g., *Initial Order Accepting Withdrawal*, pp. 11-12.

³⁴ For the purpose of evaluating the criteria for the submission of the affidavit, BellSouth may assume that the request to submit supplemental information will be granted. It must be understood, however, that BellSouth has represented that the supplemental information, referred to in the *2002 Petition*, "is not a revision or supplement to existing testimony." *BellSouth's 2002 Petition*, p. 2 n.1. If BellSouth chooses to submit an affidavit, the Authority will thereafter address the request to file supplemental evidence.

³⁵ It is axiomatic that not every attempt to supplement the record will meet the result reached herein. The circumstances and BellSouth's previous requests for delay converge here to produce this outcome.

If BellSouth chooses to re-file its case, it would result in no delay of this matter since BellSouth has already requested to supplement the record. Further, as noted earlier herein, this matter has been, in effect, held in abeyance at BellSouth's request. Therefore, as of the filing of *BellSouth's 2002 Petition*, no substantive action has been taken in this matter since July 30, 2001, and no hearing has been held.

Regardless of BellSouth's election, nothing herein constitutes a dismissal of BellSouth's Section 271 application and any characterization as such would be in error. Rather, this Initial Order aids in ensuring administrative efficiency and the orderly conduct of the proceeding, both of which will serve to move this matter forward in a timely manner. In fact, the action taken will "refresh the record" so as to avoid delays associated with multiple sets of testimony covering the same issues over different time periods, such as administrative challenges, confusion, time for responses, objections, and the like.

³⁶ *BellSouth's 2002 Petition*, p. 1.

the Intervenor's ample time to present their cases while expeditiously moving forward in the matter."³⁷

The Intervenor's maintain that "attempting to proceed with a 271 hearing before the Performance Measurements docket and OSS docket^[38] are substantially complete is like trying to put the roof on a house without first completing the foundation and the walls."³⁹ Further, the Intervenor's argue:

It is hard to see how the Authority would benefit in any way by moving forward with the 271 docket before assessing the impact of the imminent Performance Measurements order, or moving forward more quickly than the OSS docket. To the contrary, judicial economy and efficiency dictate that the Authority should conduct the 271 docket based on the outcomes of the Performance Measurements and OSS dockets.⁴⁰

Finally, the Intervenor's assert that the Authority should "abstain from setting any procedural schedule" until after BellSouth re-files its 271 application, the Authority concludes the Performance Measurements Docket, and the Authority establishes a procedural schedule in the OSS Docket.⁴¹

³⁷ *Id.* at 3.

³⁸ The Authority has two cases pending before it concerning nondiscriminatory access: (1) *In Re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (the "OSS Docket") and (2) *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193 (the "Performance Measurements Docket"). In opening the OSS Docket, the Authority affirmed that "nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition." *Order Consolidating Docket Nos. 99-00347; and 00-00392 into Docket No. 01-00193 and Opening Docket No. 01-00362, In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193, p. 2 (May 15, 2001). Further, in opening the Performance Measurements Docket, the Authority opined that "the adoption of an ongoing performance measurement program with built-in enforcement mechanisms would provide the Authority with a tool to assure that BellSouth [is] offering nondiscriminatory access to its network in a competitively neutral manner." *Id.* at p. 6.

³⁹ *Response to BellSouth's 2002 Petition*, p. 4.

⁴⁰ *Id.* at 5.

Discussion and Analysis

Given the order herein with respect to the request to submit additional evidence, it would be presumptuous, if not inappropriate, irrespective of the arguments of the parties, for the Authority to establish hearing dates at this time. Moreover, it should be noted that BellSouth voluntarily pronounced that it "will not ask this Authority to hear this matter prior to an FCC decision in the Georgia 271 case."⁴² BellSouth re-filed its joint Georgia and Louisiana 271 application before the FCC on February 14, 2002, and thus the FCC has, under the Act, until May 15, 2002, to act on the application. With its aforementioned representation, BellSouth's request to set a hearing during the week of April 15, 2002, appears, on its face, premature.

Prior to BellSouth's election to either submit an affidavit or re-file its case, consistent with this Initial Order, it would be inappropriate to establish a procedural schedule, including hearing dates. Therefore, the Hearing Officer, on the record currently before the agency, hereby denies BellSouth's motion to set hearing dates for this matter during the week of April 15, 2002, and establish the remainder of the procedural schedule based on these hearing dates.

IV. Intervenor's Motion to Dismiss

In response to *BellSouth's Motion to Amend Procedural Order*, filed September 18, 2001, the Intervenor contended, among other things, that the Authority "should dismiss the application, without prejudice, with the expectation that BellSouth will re-file the application at an appropriate time."⁴³ The request to dismiss the application is rendered moot by this Initial Order. The Intervenor may, however, renew such request if they deem it appropriate at a later time.

⁴¹ *Id.*

⁴² *BellSouth Telecommunications, Inc.'s Motion to Amend Procedural Schedule*, TRA Docket No. 97-00309, p. 2 (Sept. 14, 2001).

V. Conclusion

As always, the Authority will continue to work with the parties on this process, as such will substantially aid in furthering the goals of both the State Telecommunications Act and the Federal Telecommunications Act. The actions taken herein are towards an expedient and administratively orderly review of BellSouth's Tennessee 271 application. Given the stage of this proceeding and the circumstances now existing, whatever the results of this Initial Order, TRA-induced delay is not one of them.⁴⁴

The Authority stands ready and willing, as it has from the outset, to engage in an expedient review of BellSouth's 271 application. If necessary, the Authority will work with the parties towards providing BellSouth with guidance on how to correct any identified deficiencies. This consolidated effort would, by design, be expended to remove obstacles that prohibit full Section 271 compliance and thereby aid BellSouth in realizing a favorable recommendation in Tennessee supporting its entry into the long distance market.⁴⁵

IT IS THEREFORE ORDERED THAT:

1. *BellSouth Telecommunications, Inc.'s Petition to Establish Procedural Schedule* is granted in part and denied in part, consistent with this Initial Order.

⁴³ *Response to Motion to Amend Procedural Schedule*, TRA Docket No. 97-00309, p. 1 (Sept. 20, 2001).

⁴⁴ BellSouth asked for a speedy review in its May 30, 2001, *Preliminary Notice of Filing*. After the agency commenced to move this matter forward at the requested pace, BellSouth requested that the scheduled hearings be cancelled and this matter be deferred. See *BellSouth's Motion to Amend Procedural Order*, p. 2 (Sept. 18, 2001); and *BellSouth's Motion to Amend Procedural Schedule*, pp. 1-2 (Sept. 14, 2001).

⁴⁵ In its 2002 *Petition*, BellSouth advises that it considers the "Brief In Support of Application" referenced in the August 2001 Initial Order to be the Post-Hearing Brief. According to the *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, p. 1 (March 23, 2001), a Section 271 application consists of a "Brief in Support of Application" and "any supporting documentation." At the July 12, 2001, Status Conference, counsel for BellSouth agreed that BellSouth's 271 filing with the Authority would contain said Brief. The emphasis here is simply that BellSouth file with the Authority that on which it will rely before the FCC. Reasonable, slight variations in format, but not in substance, may be acceptable.

2. BellSouth Telecommunications, Inc.'s request to consolidate Phase I and Phase II of this proceeding is granted.

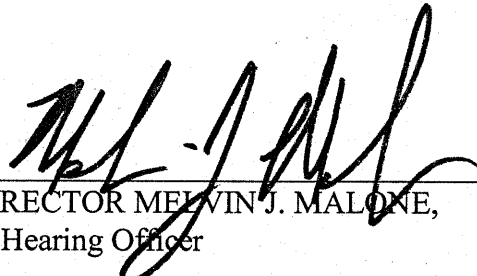
3. BellSouth Telecommunications, Inc.'s request to submit supplemental evidence to its July 30, 2001, Section 271 filing is held in abeyance.

4. BellSouth Telecommunications, Inc. shall, consistent with this Initial Order, either submit a detailed, substantive affidavit or re-file its Tennessee Section 271 application.

5. BellSouth Telecommunications, Inc.'s request to set a hearing date for the week of April 15, 2002, is, at this time, on the record before the Tennessee Regulatory Authority, denied.

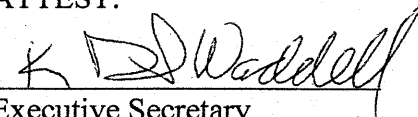
6. Intervenors' request to dismiss is rendered moot.

7. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Initial Order.



DIRECTOR MELVIN J. MALONE,
as Hearing Officer

ATTEST:



Executive Secretary